

# A Human Rights Litigator's Misgivings

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Taking human rights violators to court can't be a bad thing, can it?

Old Augusto Pinochet (Foto) thought he'd get away with all the atrocities he committed in Chile, but no: A Spanish judge had him arrested in London, and that sort of cracked the consensus in Chile that the success of democratic transition depends on leaving uniformed torturers untouched. The general had to face justice after all (although he never spent a day in jail in the end).

South American military dictators like Chile's Pinochet and Argentina's Videla might be prime examples of successful human rights litigation: Victims have run out of options in their home countries, all legal remedies exhausted and the perpetrators still roaming free. So they sue them abroad, by means of laws enacted in the name of the universality of human rights (such as our own Völkerstrafgesetzbuch).

The victims get their day in court, and even if that doesn't directly lead to punishment for the perpetrators it still makes their lives more difficult: They get a lot of bad press: The world notices what despicable persons they are. They cannot travel as easily any more: Those skiing trips to Switzerland will have to end if they don't want to risk

being arrested. They are held accountable for what they did: Isn't that what criminal justice is all about?

Yesterday I heard a conference at Wissenschaftskolleg here in Berlin by [Wolfgang Kaleck](#), co-founder of the European Center for Constitutional and Human Rights (ECCHR) and Germany's most prominent human rights litigator.

He made all those points to underline the merits of his profession. But at the same time he showed a remarkable degree of pensiveness about his line of business.

First, there is the issue of what business human rights activists from a place like Germany, litigating or not, have at all to meddle with other people's grievances. What gives them the right to walk into some African, Asian or American country, to grab some suffering people, to take their stories away from them to feed their international charity business machine with, and to classify those peoples as victims in need of some rich white people to save them and feel good about it? How neo-colonial is that?

That is not too far from some realities, is how Kaleck put it.

Human rights litigation seems to be primarily something about poor people from the South as well: Kaleck quoted some research by the Argentinian scholar Máximo Langer, saying that out of the 1050 human rights complaints filed in the last 10-15 years only 32 made it to court, and not a single one of these was against some powerful person from the West.

That makes it all the more important to bring people like [Donald Rumsfeld](#) to court. But then there is the Belgian example, and Kaleck is very much aware of it: If you push too hard and don't pick your battles and attack too powerful an adversary, legislators will cave in and rather shred the universal jurisdiction law before they let you do any diplomatic damage. Your case will backfire and undercut the promotion of human rights instead of advancing it.

There are some other issues: Why make a legal claim when the matter is actually political? Why use scarce resources on costly trials for dubious outcomes instead of pushing full speed ahead for political change?

Why ally yourself to something as unappealing as the criminal law system to achieve something for human rights?

What if some really unsavoury party starts using universal jurisdiction to promote their aims? What if Ahmadinejad or Lukashenko set up some NGO to sue their opponents abroad?

Some of these issues were raised by the audience, some of them by Kaleck himself. But the question at the core was this: At the end of the day, does human rights litigation actually any good at all?

He was rather candid about the answer: Basically, he doesn't really know. There is hardly any research about the impact of human right litigation. Even the Pinochet case from more than a decade ago remains pretty much unresearched.

At the end, a young participant stood up and said: You are using the law against the strong, and that is a heroic thing to do. You should be proud of yourself.

But he is not. I am not proud, he said.

